

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SALVADOR A. RODRIGUEZ,

Petitioner,

No. C 04-2233 PJH

v.

DERRAL ADAMS, Warden,

Respondent.

**ORDER VACATING HEARING DATE
AND SETTING BRIEFING SCHEDULE**

On June 1, 2011, the court granted Rodriguez's federal habeas petition under 28 U.S.C. § 2254. On June 10, 2011, respondent filed a motion to alter judgment and a request for an evidentiary hearing. The court VACATES the hearing date, and will decide the matter on the papers. Petitioner's opposition brief is due no later than **Friday, July 8, 2011**, and respondent's reply is due no later than **Friday, July 22, 2011**.

In particular, the parties should address the following issues, *in addition to any others* raised by respondent in its opening brief:

- 1) a. Whether this court should now reconsider its June 1, 2011 order granting petitioner relief on his ineffective assistance of counsel claim based on the United States Supreme Court's decision in *Walker v. Martin*, 131 S.Ct. 1120, 1128-29 (Feb. 23, 2011); and
- b. why respondent failed to raise the issue in a more timely fashion following the Supreme Court's February 2011 decision in *Walker* in a

1 motion to dismiss, supplemental memorandum, or otherwise, and
2 whether those reasons now excuse respondent's earlier failure to raise
3 the procedural bar issue as an affirmative defense; and

- 4 2) whether, as suggested by respondent, this court is permitted to consider in
5 the context of federal habeas proceedings new evidence adduced at an
6 evidentiary hearing before this court, but not presented to the state court,
7 pursuant to the United States Supreme Court's recent decision in *Cullen v.*
8 *Pinholster*, 131 S.Ct. 1388, 1398 (April 4, 2011) ("the record under review
9 must be limited to the record in existence at that same time i.e., the record
10 before the state court").

11 **IT IS SO ORDERED.**

12 Dated: June 13, 2011



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15 PHYLLIS J. HAMILTON
16 United States District Judge
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